

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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December 6, 2005

Captain Raymond Peavy
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File No. 05-0549
L.A.S.D. File No. 005-10520-0278-055

Dear Captain Peavy:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 11, 2005, non-fatal shooting of Marcos Vieras by Los Angeles County Sheriff's Deputies Jose Mendoza, Elizabeth Aguilera and Silvano Garcia. We have concluded that the deputies acted lawfully in self-defense and in the defense of each other.

The following analysis is based upon reports prepared by the Los Angeles County Sheriff's Department submitted to this office by Sergeant Mitchell Loman and Detective Jonas Shipe on October 25, 2005. The District Attorney Command Center was notified of the shooting at approximately 3:00 a.m. on September 11, 2005. The District Attorney Response Team, comprised of Deputy District Attorney Edward Miller and District Attorney Senior Investigator [redacted] responded to the scene. We were given a briefing of the circumstances surrounding the shooting and a "walk-through" of the scene. Compelled statements were not considered as part of this analysis.

FACTUAL ANALYSIS

On September 11, 2005 at approximately 2:00 A.M., Deputies Jose Mendoza and Elizabeth Aguilera responded to a call reporting a loud party at [redacted] Union Pacific Avenue, in the City of Los Angeles. As they approached the location, they saw Marcos Vieras and another male walking away from the party, south across Union Pacific Avenue at the intersection of Downey Road. On making eye contact with the deputies, Vieras and his companion walked away quickly and began reaching into their waistband

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areas. As Vieras and the other male turned the corner north onto Downey Road, the deputies saw that Vieras was holding a handgun in his right hand. Both males then went behind a parked van. Deputy Mendoza, fearing that the males were planning an ambush, quickly jumped out of the patrol car. As Mendoza did so, Vieras and his companion split up. Vieras doubled back and walked south on Downey Road, while his companion walked north. Deputy Mendoza yelled at Vieras three times, "Deputy Sheriff! Let me see your hands!" Vieras stepped up his pace, then began to run. Mendoza chased Vieras on foot east on Union Avenue, then south on Sunol Drive. Mendoza yelled, "Stop! Drop the gun!" as he pursued Vieras. Deputy Aguilera followed behind Mendoza in the patrol car. Vieras turned east on Tuttle Street and the deputies lost sight of him for several seconds. As the deputies rounded the corner, Vieras fired at them. Deputy Mendoza described Vieras as shooting from a "tactical shooting stance." Mendoza immediately returned fire and the suspect went down on the sidewalk. At about the same time, Mendoza somehow tripped and also fell on the sidewalk.

While down on his left side, Deputy Mendoza continued to fire at Vieras because he would not drop his gun. Mendoza reloaded after running out of ammunition and continued firing. He fired a total of twenty-three rounds at Vieras.

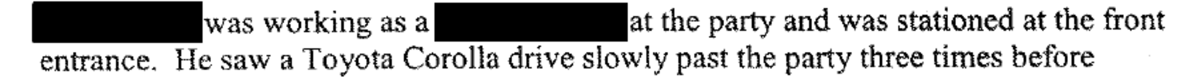
On seeing Deputy Mendoza fall to the sidewalk, Deputy Aguilera believed he had been shot. She ran to his aid and fired two rounds at Vieras as Mendoza continued to fire. Vieras fell over, dropped his gun and the deputies stopped firing.

Vieras, however, sat back up and grabbed the gun. Deputy Aguilera again fired two rounds and Vieras dropped the gun.

Deputies Silvano Garcia and Scott Hennessy arrived at the scene in a unit driven by Garcia. Garcia joined Deputies Mendoza and Aguilera in ordering the defendant to stop moving and to stay away from the gun. Vieras, however, sat up again, grabbed the gun and pointed it at the three deputies. Deputy Aguilera fired two additional rounds and Garcia fired eight rounds at Vieras. Vieras fell onto his back and was subsequently taken into custody.

Paramedics responded and Vieras was transported to Los Angeles County—USC Medical Center. Vieras sustained twenty-one gunshot wounds to his extremities. The wounds were superficial and did not require surgery.

Vieras was armed with a Glock 9 millimeter semi-automatic handgun. The gun's magazine broke apart as the result of a malfunction, apparently caused when a fired cartridge casing failed to properly eject from the chamber. Thus, one fired cartridge casing was found in the gun's chamber and eight live rounds, which were ejected from the gun when the magazine broke, were recovered. Based on the state of the evidence, it appears that Vieras fired at least two rounds at the deputies.


[redacted] was working as a [redacted] at the party and was stationed at the front entrance. He saw a Toyota Corolla drive slowly past the party three times before

parking. Two males, the driver and a passenger, exited the car and appeared to be adjusting something in their waistbands. On seeing this, [redacted] believed the men were armed with firearms. As the males approached to enter the party, [redacted] heard the passenger say the word, "Glock." [redacted] told the males he would need to search them. The males briefly argued that they did not see other partygoers being searched. [redacted] told them that he knew they had "heat" and that they would either have to submit to a search or return their guns to their car. The driver asked if they would be allowed into the party if they put the guns in the car. The driver further stated they had enemies and needed to carry the guns. The driver then told [redacted] they would be back. The two males then walked back toward their car. As the males crossed Union Pacific Avenue to Downey Road, the patrol car drove up and stopped near the males. The males ran in different directions. The deputies followed the driver. [redacted] heard four to five shots approximately two minutes later.

Vieras is an active "Lott 13" gang member. [redacted]

CONCLUSION

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears that the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. People v. Williams, (1977) 75 Cal.App. 3d 731.

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions—Criminal, 5.30, 5.32.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo, (1948) 85 Cal. App. 2d 577.

When the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collins, (1961) 189 Cal. App. 2d 575.

In this case, the deputies were justified in their use of deadly force against Vieras. Deputies Mendoza and Aguilera were clearly confronted with imminent mortal danger when Vieras fired at them as they rounded the street corner. They remained in apparent

danger until Vieras dropped his gun and acted reasonably in continuing to fire until he did so. Thus, the use of deadly force at this juncture was justified. The further use of deadly force by Deputy Aguilera, when Vieras subsequently picked up his gun, and by both Deputy Aguilera and Deputy Garcia, when Vieras picked up his gun yet again and pointed it at the deputies, was also justified because Deputies Aguilera and Garcia reasonably believed that they were in imminent mortal danger.

We conclude that Deputies Mendoza, Aguilera and Garcia acted lawfully in self-defense and in defense of each other when they used deadly force against Marcos Vieras. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

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By Edward A. Miller

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c: Deputy Jose Mendoza #[redacted]
Deputy Elizabeth Aguilera #[redacted]
Deputy Silvano Garcia #[redacted]